IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 792 OF 2005

Anant Bhagwan Kamble ..... Petitioner

vs.

1. The Principal,
   M. L. Dahanukar College of Commerce,
2. The Secretary,
   Parle Tilak Vidyalaya Association,
3. The Joint Director,
   Higher Education, Mumbai Region,
4. The Registrar,
   University of Mumbai. ... Respondents

None present for petitioner
Mr. P. N. Shastri for respondents 1 and 2

With

WRIT PETITION NO. 2690 OF 2004

1. The Principal,
   M. L. Dahanukar College of Commerce,
2. The Secretary,
   Parle Tilak Vidyalaya Association ... Petitioners

v/s.

1. Anant Bhagwan Kamble
2. The Joint Director,
   Higher Education, Mumbai Region,
3. The Registrar,
   University of Mumbai ... Respondents

Mr. P. N. Shastri for petitioner
None for respondents

CORAM: D. G. KARNIK **J.**

DATE:13/6/2006

ORAL JUDGMENT :

1. Both these petitions are directed against the judgment and order dated 3rd September 2004 passed by the Mumbai University and College Tribunal, Mumbai, (for short the Tribunal). Writ petition No. 792 of 2005 is filed by the employee and Writ petition no. 2690 of 2004 is filed by the management of the college respectively challenging parts of the order against them. Since both the petitions are directed against the same order they are disposed off by this common judgment.

2. Petitioner in writ petition no. 792 of 2005 is hereinafter referred to as “the employee”, and the petitioners in writ petition no. 2690 of 2004 are hereinafter referred to as “the college”

3. By virtue of the powers conferred by the Bombay University Act 1974, the Poona University Act, 1974, the Shivaji University Act, 1974, the Marathwada University Act, 1974, the Nagpur University Act, 1974, the Shreemati Nathibai Damodar

Thackersey Women's University Act, 1974, and the Amravati University Act, 1983, the Government of Maharashtra has framed the rules called the Maharashtra Non- Agricultural Universities and affiliated College Standard Code (Terms and Conditions of non- teaching employees) Rules, 1984, (hereinafter called “the Standard Code”). The Standard Code prescribes the terms and conditions of service of non – teaching employees employed in the different colleges, and also prescribes the procedure for the disciplinary actions against the employees for breach of discipline and / or violation of any of the conditions of the Standard Code.

4. The college charged the employee of several misconducts, and appointed Mr. V. N. Malya as an inquiry officer to inquire into the various charges of misconducts, falling under items (a), (d), (h), (i), (k), (o), (p) and (r) of Rule 42 of the Standard Code. The inquiry officer informed the employee about the various charges leveled against him and held the enquiry in accordance with law. The college examined 11 witnesses all of whom were cross examined by the employee. The employee did not examine himself nor did he examine any witnesses. After

considering the evidence adduced, the inquiry officer came to the conclusion that the allegations and charges levelled against the employee were proved and he recorded a finding to that effect (see paras 453 and 454 of the report of the inquiry officer). In exercise of the recommendatory powers conferred on him by rule 46(16) (V) of the Standard Code and considering the gravity of the charges proved against the employee, the Inquiry Officer recommended that punishment of dismissal from service be imposed upon the employee.

5. After serving a copy of the inquiry report and giving him an opportunity to show cause as provided under Rule 43(1)(b) (v) and after considering the employee's reply the management of the college came to the conclusion that the charges proved against the employee were serious and that the employee had not brought on record any extenuating circumstances. However, taking into consideration the age of the employee, who was about 32 years of old, and as a matter of sympathy instead of dismissal the college imposed the penalty of removal from service on the employee.

6. Aggrieved employee filed an appeal bearing appeal no. 2 of 2004 before the Mumbai University and College Tribunal (for short "the Tribunal") under Section 59(1) of the Maharashtra Universities Act 1994. The learned Member of the Tribunal considered all the evidence adduced before the Inquiry Officer and on the re-appreciation of the evidence came to the conclusion that 7 out of the 14 charges levelled against the employee were proved while 7 others were not proved. The Tribunal then examined the propriety of the punishment of dismissal from service imposed on the employee. Considering that the appellant was of 32 years and had put in 6 years of service Tribunal held that it would be too harsh to remove him from service and therefore set aside the penalty of removal from service imposed by the management of the College and substituted it by penalty of reduction in rank to the lower post as per rule 43(1)(b)(xii) of the Standard Code.

7. Aggrieved by the order holding him guilty of 7 out of the 14 charges of misconducts and imposition of the penalty of reduction in rank the employee has filed the writ petition no. 792 of 2005 challenging the order of the Tribunal. Aggrieved by

the order of letting off the employee of 7 out of the 14 charges and modification of the penalty of removal from service to that of reduction in rank the college has filed the writ petition no. 2690 of 1994.

8. At the hearing of the petition the employee, as well as his advocate were absent. Learned counsel for the college was heard. He submitted that the findings of the Tribunal, letting off the employee of 7 of the 14 charges were erroneous. He submitted that the Tribunal hearing the appeal under the Standard Code is not entitled to re-appreciate the evidence. If the enquiry is fair and proper the Tribunal cannot interfere with the findings of fact recorded in a domestic enquiry. He submitted that the findings recorded by the inquiry officer were possible findings of fact and in the absence of any perversity the Tribunal had no jurisdiction to set aside the said findings of fact. In the alternative he submitted that assuming that the decision of the Tribunal in setting aside findings on 7 charges was right, the Tribunal erred in showing misplaced sympathy to the employee by modifying the penalty of removal from service to that of reduction in rank. He submitted that the 7 charges which

were held to be proved against the employee by the Tribunal were so grave that there was no scope of showing any leniency. The management had the discretion, considering gravity of the misconduct, to decide what punishment should be imposed and the Tribunal erred in interfering with the discretion of management. He further contended that the management itself had taken a lenient view and therefore the Tribunal erred in showing misplaced sympathy in further reducing the punishment.

9. Section 59 of the Maharashtra Universities Act, 1954 says that notwithstanding anything contained in any law or contract for the time being in force any employee (whether a teacher or other employee) in any university, college or recognised institution (other than that managed and maintained by the State Government, Central Government or a local authority), who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the university or the management and who is aggrieved, shall have a right of appeal against any such order to the Tribunal. For the purpose of adjudication, hearing and disposal of appeals the Tribunal shall

have the same powers as are vested in an appeal court under the Code of Civil Procedure 1908. It also states that the Tribunal shall have the power to stay the operation of any order against which an appeal is made, on such terms and conditions, as the Tribunal may think fit. Section 61 of the Maharashtra Universities Act confers power on the Tribunal, after giving reasonable opportunity of being heard, to decide and set aside the order of the University or the management, partly or wholly and direct reinstatement of the employee to the same post or to a lower post or to restore the employee to the rank which he held before reduction or to grant any other relief.

10. It is true the normally in a revision, writ or other proceedings the against an order passed in a domestic enquiry the authority hearing the revision, writ or other proceedings does not re-appreciate the evidence adduced before the enquiry officer. However, section 60 of the Maharashtra Universities Act provides that the Tribunal shall have the same powers as are vested in an appellate court under the Civil Procedure Code. An appellate civil court is entitled to re-appreciate the evidence and come to its own conclusions. It is entitled to set aside the

findings which are not perverse but erroneous. The Tribunal constituted under the Maharashtra Universities Act, 1994 hearing an appeal under section 59 being an appellate court, in my view, is entitled to re-appreciate the evidence adduced before the enquiry officer and come to its own conclusion as to the correctness of the findings of fact recorded by the enquiry officer. The Tribunal does so like a court of appeal exercising appellate powers under the Civil Procedure Code. The Tribunal is entitled to re-appreciate the evidence and reverse a finding of fact which it considers erroneous though not perverse. Therefore, the contention of the learned counsel for the college that the Tribunal erred in re-appreciating the evidence and setting aside the finding of guilt on seven out of fourteen charges has to be rejected.

11. The jurisdiction of this court under Article 227 of the Constitution of India is limited. The findings of fact recorded by a Tribunal cannot be interfered with in exercise of writ jurisdiction under Article 227, except in the case of perversity. With the help of the learned counsel for the petitioner I have gone through the judgment of the Tribunal. The Tribunal has

taken into consideration all the relevant evidence. On reapprication of the evidence, to which it was entitled to, it has come to the conclusion that seven out of the fourteen charges were proved and seven were not. I find no perversity in the conclusions reached by the Tribunal. The findings of the Tribunal are not only possible but probable findings of fact and have been correctly recorded by the Tribunal.

12. The next question to be considered however is whether, in the facts and circumstances of the case, the Tribunal erred in reducing the penalty of removal of service to that of reduction in rank. In para 10 of its order the Tribunal has set out the fourteen charges leveled against the employee and has held that seven of them are proved. The seven charges held to be been proved by the Tribunal are as follows :-

i) On 27.6.2001 from 2.00 p.m. To 7.00 p.m. The Appellate left his duty without prior permission of or intimation to his superiors.
ii) On 27.6.2001 the Appellant made a phone call to Principal Shri Oka and used discourteous and insulting language to him. In addition he gave a threat to his life and also threatened to break his limbs.
iii) The appellant was availing of one hours lunch break when as a matter of fact, as per rules he was entitled to half an hour's break for that purpose.
iv) The appellant caused harassment and inconvenience to

the students in making use of Library.

v) The Appellant projected himself as a member of the Local Advisory Committee of the College though he was only a member of the Local Managing Committee of the College.

vi) On his election as a member of the Local Managing Committee the Appellant put up a thanks-giving letter on the Notice Board of the College without prior permission of the Principal. He thus made use of the Notice Board for self publicity.

vii) The Appellant was invigilator for an examination held on 4/5/2001. But he was found absent for quite some time from the examination hall.

In my considered view the charges at Sr. Nos. (ii), (iv) and (vii) mentioned above are very serious charges. The appellant by making a phone call threatened the principal with his life and also threatened to break his limbs. Threatening the principal with life and also threatening to break his limbs would certainly affect the discipline of the college. The principal, if he succumbs to the threats, would not be able to maintain the discipline amongst the employees and students. If an employee who is served a memo, starts giving threats to the principal with his life and breaking his limbs the entire discipline in the institution would collapse. So also the charge mentioned at Sr. No. (iv) above does not deserve any leniency. The colleges are meant for students. The teaching employees impart knowledge to the

students and the non teaching employees help the teachers in that regard. Libraries are essential facilities for the students in assimilation of knowledge. The appellant hindered the students in use of the library facilities. The appellant compelled the library staff to stop home lending facility of books to the students. This not only would cause inconvenience to the student but the very purpose of the library, namely, to enable a students to avail of borrowing the books for home reading was curtailed by the appellant. The appellant did retard the object of the college in imparting education to the students. Examination at the end of the academic year is conducted for assessment of the learning and knowledge of the students. The students are assessed on the basis of their performance at the examination. Purity is required to be maintained in the conduct of the examination. In order to maintain the purility in the examination invigilators are appointed to ensure that no malpractices are committed in the examination hall. The job of an invigilator is very important. The appellant who was an invigilator for examination absented himself from the examination hall. This was a serious lapse and must be viewed seriously.

13.The misconducts mentioned above clearly show that showing sympathy to such a delinquent employee would be a misplaced sympathy and would undermine the discipline in an educational institution. In my view the Tribunal erred in reducing the penalty. I am therefore satisfied that the order of the Tribunal needs to be set aside and the penalty of removal from service passed by the college needs to be confirmed.

14.For these reasons writ petition no. 792 of 2005 is dismissed. Writ petition No. 2690 of 2004 is allowed in part. The order of the Tribunal, in so far as it reduces the penalty imposed on the employee is set aside and the order of the College dated 31st December 2003 imposing penalty of removal from service is confirmed. In the facts and circumstances of the case the parties shall bear their own costs.

(D. G. KARNIK **J**)

True copy

P.S. To Judge.